IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
November 15, 2005 Session

CLUB SYSTEMS OF TENNESSEE, INC. v. YMCA OF MIDDLE TENNESSEE, ET AL.

A Direct Appeal from the Chancery Court for Davidson County
No. 03-1102-1 (IV) The Honorable Richard H. Dinkins, Chancellor

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No. M2004-01966-COA-R3-CV - Filed December 19, 2005

Appellants, a group of for-profit health club owners challenge the constitutionality and application of T.C.A. §67-5-225, which provides for a real and personal property tax exemption for family wellness centers. Specifically the Appellants assert that the statute violates both Tenn. Const. art. II, § 28 and Tenn. Const. art. XI, § 8. The Tennessee State Board of Equalization and the trial court upheld the statute's constitutionality, and we affirm that portion of the trial court's holding. Appellants also challenge the trial court's determination that Appellee, the YMCA of Middle Tennessee, satisfies the requirements set forth in T.C.A. §67-5-225 so as to qualify for tax exempt status thereunder. Finding that there is insufficient evidence to support the trial court's conclusion that the Uptown YMCA location satisfies the requirements of the statute, we reverse and remand on that issue. The order of the trial court is otherwise affirmed.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Trial Court Reversed in Part, Affirmed in Part, and Remanded

W. FRANK CRAWFORD, P.J., W.S., delivered the opinion of the court, in which DAVID R. FARMER, J. and HOLLY M. KIRBY, J., joined.

Charles W. Welch and timothy A. Glut of Nashville for Appellant, Club Systems of Tennessee, Inc.

Paul G. Summers, Attorney General and Reporter; Mary Ellen Knack, Assistant Attorney General for Appellee, State Board of Equalization

Michael D. Sontag and Christopher L. Haley of Nashville for Appellee, YMCA of Middle Tennessee

OPINION

Club Systems of Tennessee, Inc. d/b/a The Club at Green Hills, The Club at Bellevue, Inc., and Quality Health Clubs for Fair Tax Treatment Seeking Revocation of the Exempt Status of

Property Owned by the YMCA of Middle Tennessee (together "Club Systems," "Plaintiffs," or "Appellants") is a collective group of Tennessee, for-profit corporations that own and operate health clubs throughout Davidson County, Tennessee. The YMCA of Middle Tennessee (the "YMCA") is a Tennessee, nonprofit organization that owns and operates various YMCA health and fitness centers throughout Davidson County and Middle Tennessee.

T.C.A. §67-5-212(b)(5) (2003) authorizes the executive secretary of the State Board of Equalization (the "Board," and together with the YMCA, "Defendants," or "Appellees") to initiate proceedings for revocation of property tax exemptions on his or her own motion "or upon the written complaint of any person upon a determination of probable cause." Pursuant to this statute, the underlying administrative proceedings began on October 25, 1996 when Club Systems filed a written complaint with the Board seeking at least a partial revocation of the YMCA's property tax exemptions, which were initially granted pursuant to T.C.A. §67-5-212. Specifically, the Club Systems Complaint asserts that property owned by the YMCA was not used purely and exclusively for charitable or religious purposes as required under Tenn. Const art. II, §28 and T.C.A. §67-5-212(a). On November 21, 1996, the YMCA filed its Response to the Complaint asserting that there was no basis for a determination of probable cause and requesting that the Executive Secretary of the State Board of Equalization (the "Executive Secretary") not initiate proceedings for the revocation of the YMCA's tax exemption status.

On December 12, 1996, the Executive Secretary entered his "Order on Determination of Probable Cause". The Executive Secretary specifically determined that "there is probable cause to believe that the current use of the [YMCA's] property known at the Downtown YMCA...may not qualify for property tax exemption...." The matter was referred to the administrative judge for a Board hearing on the merits. Following a pre-hearing conference, on March 7, 1997, the administrative law judge found that additional information was needed in order to determine whether probable cause existed before proceeding with the matter. Accordingly, the judge issued an order returning the matter to the Executive Secretary for further proceedings. The Executive Secretary, in turn, referred the probable cause determination to Forrest M. Norville, a staff attorney.

After a review of the file, Mr. Norville issued his "Probable Cause Determination," in which he concluded that probable cause existed to revoke that part of the YMCA's property used for "...exercise, recreation and physical activities of its members...."[1] Following Mr. Norville's determination, the Board took no further formal action.

On June 23, 2000, the Tennessee General Assembly enacted 2000 Public Acts, Chapter 982, § 58 and Chapter 993, § 1, which clarified that "family wellness centers" are exempt from property taxes as a charitable use property. Both of these Acts specifically apply to "all matters pending

[1] Mr. Norville's determination was based, in part, upon the decision in the case of ***Middle Tennessee Medical Center v. Assessment Appeals Commission of the State of Tennessee; Tommy Sanford as Assessor of Property of Rutherford County, Tennessee and the Tennessee State Board of Equalization***, No. 01A01-9307-CH-00324, 1994 WL 32584 (Tenn. Ct. App. Feb.4, 1994), perm. appeal denied May 9, 1994.

before the Board of Equalization on the effective date of [both Acts]." ***See*** Tenn. Pub. Acts ch. 982, §58(e) and ch. 993. These Acts are codified at T.C.A. §67-5-225 (2003), which reads:

> **67-5-225. Family wellness center exemption.–** (a) Real and personal property used as a nonprofit family wellness center shall be exempt from property taxes as a charitable use of property if the center is owned and operated as provided in this section. "Family wellness center" means real and personal property used to provide physical exercise opportunities for children and adults. The property must be owned by a nonprofit corporation that is a charitable institution which:
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> (1) Has as its historic sole purpose the provision of programs promoting physical, mental, and spiritual health, on a holistic basis without emphasizing one over another;
> (2) Provides at least five (5) of the following eight (8) programs dedicated to the improvement of conditions in the community and to support for families:
>
> > (A) Day care programs for preschool and school-aged children;
> > (B) Team sports opportunities for youth and teens;
> > (C) Leadership development for youth, teens, and adults;
> > (D) Services for at-risk youth and teens;
> > (E) Summer programs for at-risk and non-at-risk youth and teens;
> > (F) Outreach and exercise programs for seniors;
> > (G) Aquatic programs for all ages and skill levels; and
> > (H) Services for disabled children and adults; and
>
> (3) Provides all programs and services to those of all ages, incomes and abilities under a fee structure which reasonably accommodates persons of limited means and, therefore, ensures that ability to pay is not a consideration. The corporation must further meet the requirements of subsection (b).
>
> (b) To qualify for exemption, the nonprofit corporation must first be exempt from federal income taxation as an exempt charitable organization under the provisions of § 501(c)(3) of the Internal Revenue Code and any amendments thereto. In addition, the nonprofit corporation shall provide that:

> (1) The directors and officers shall serve without compensation beyond reasonable compensation for services performed;
>
> (2) The corporation is dedicated to and operated exclusively for nonprofit purposes;
> (3) No part of the income or the assets of the corporation shall be distributed to inure to the benefit of any individual; and
> (4) Upon liquidation or dissolution, all assets remaining after payment of the corporation's debts shall be conveyed or distributed only in accordance with the requirements applicable to a § 501(c)(3) corporation.
>
> (c) All claims for exemptions under this section are subject to the provisions of § 67-5-212(b).
>
> (d) Nothing in this section shall prevent property of the corporation other than wellness centers from qualifying under other provisions of law.

On November 3, 2000, the Executive Secretary directed Mr. Norville to reconsider the initial probable cause determination in light of the passage of T.C.A. §67-5-225. In response, Mr. Norville issued his "Reconsideration of Probable Cause Determination," in which he concluded that (i) "probable cause exists to revoke the YMCA exempt status..." because, in his opinion, the YMCA was not qualified as a 501(c)(3), tax-exempt organization and failed to meet certain of what he characterized as "organizational" requirements; (ii) even if the YMCA were a qualified 501(c)(3), tax-exempt organization and met these organizational requirements, the portion of its property used for physical wellness by its dues-paying members would not be exempt from tax; and (iii) even if the YMCA were organized as required by the statute, property used for physical wellness at the Uptown YMCA would not be "eligible for property tax exemption" because, in his opinion, this particular facility did not meet the five of eight test outlined in the statute. Mr. Norville concluded that an exemption could only be applied to that portion of the property used for physical exercise and recreation by families or individuals who either received membership privileges or participated in special programs at discounted rates and/or charges. "The remainder of the property used to provide physical exercise and recreational opportunities to children and adults..." would not be entitled to an exemption because, in Mr, Norville's opinion, property used to provide physical wellness opportunities to dues paying members was not being used for a charitable purpose.

On October 10, 2002, counsel for the respective parties met with the Executive Secretary to discuss the status of the case and to set a date for the probable cause hearing. At that meeting, it was determined that the only issue that would be presented to the Board would be the applicability of T.C.A. §67-5-225 to the YMCA and its facilities. The parties further agreed that: (i) the issue of the constitutionality of T.C.A. §67-5-225 was not a matter that could properly be brought before the Board, and (ii) the issue of the applicability of the general property tax exemption (i.e. T.C.A. §67-

5-212) to the YMCA and its facilities and the testimony and other proof relating thereto was a matter best heard in a *de novo* trial of that issue in the Chancery Court of Davidson County. Accordingly, the parties agreed that, with respect to these latter two issues, all legal arguments and proof with respect thereto would be reserved for the *de novo* trial of this matter in the Chancery Court.

The parties presented their cases at a full hearing before the Board on December 17, 2002. The Board issued its "Final Decision and Order" on February 10, 2003. The Board denied Club Systems' Complaint to revoke any portion of the YMCA's tax-exempt status. The Board specifically found that "[t]he YMCA, under the stipulations, testimony and exhibits of record, demonstrated compliance with each of the program and organizational requirements of the statute.... We find and conclude that the YMCA has met the requirements of the family wellness center exemption statute."

On April 25, 2003, and pursuant to T.C.A. § 4-5-225, Club Systems filed a "Complaint for Declaratory Judgment" in the Chancery Court of Davidson County.[2] In its Complaint, Club Systems asserts that T.C.A. §67-5-225 is unconstitutional as written and as applied, or, in the alternative, that the YMCA does not meet the requirements of that statute. Club Systems requested that the YMCA's tax-exempt status be revoked to the extent that any portion of its property was not used for charitable or religious purposes. YMCA filed its Answer on May 23, 2003.

On January 13, 2004, the trial court, sitting without a jury, heard arguments regarding the limited issue of whether T.C.A. §67-5-225 is constitutional as written. The parties, with the agreement of the trial court, reserved the issues of whether the statute is constitutional as applied and whether the YMCA meets the requirements of the statute. In its "Memorandum Opinion" of January 23, 2004, the trial court concluded that "T.C.A. §67-5-225 does not create a new property tax exemption for the YMCA and the classification for fitness centers contained in the statute is reasonably related to the expressed public policy to provide for the physical health and social well-being of citizens; accordingly, no constitutional violation is found." Contemporaneously with the "Memorandum Opinion," the trial court entered its Order declaring that T.C.A. §67-5-225 is constitutional as written.

On May 17, 2004, a second hearing was held before the trial court at which time the parties introduced additional evidence and presented arguments concerning the issues of whether T.C.A. §67-5-225 was constitutional as applied and, if so, whether the various properties owned by the YMCA were compliant with the requirements set out in the statute. On July 15, 2004, the trial court entered a second "Memorandum Opinion," which reads, in pertinent part, as follows:

FINDINGS OF FACT

[2] On May 14, 2003, Club Systems filed an "Amended and Restated Petition for Judicial Review and Complaint for Declaratory Judgment," which corrected certain procedural defects contained in the original filing.

> The Board of Equalization made certain Findings of Fact, which are supported by substantial and material evidence and which are, in part, as follows:
>
> 1. Apart from one YMCA facility in downtown Nashville, known as the "Uptown Y", it is undisputed that the YMCA properties at issue are used to provide physical exercise opportunities for children and adults.
> 2. The "Uptown Y" seldom if ever serves children and is located a few blocks from the "Downtown Y" which serves children.
> 3. The two physically separate properties can be considered [as] one wellness center.
> 4. The YMCA has been validly organized as a not-for-profit corporation and operates as such.
> 5. The YMCA complies with the program and organizational requirements of T.C.A. §67-5-225.
> 6. The fee structure for persons wishing to become members of the YMCA reasonably accommodates persons of limited means.
> 7. The YMCA complied with federal standards for tax exempt organizations in establishing compensation for employees.
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> * * *
>
> **CONCLUSION**
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> ...[T]he Court concludes that the decision of the Board of Equalization is supported by substantial and material evidence and that the YMCA meets the requirements of T.C.A. §67-5-225. It is therefore unnecessary to determine if it qualifies for the exemption under T.C.A. §67-5-212. The Final Decision and Order of the Board of Equalization is AFFIRMED in all respects and this matter is DISMISSED.

The trial court entered an Order contemporaneously with this "Memorandum Opinion". Club Systems appeals from this Order and raises three issues for review as stated in its brief:

> 1. Whether the trial court erred in determining that T.C.A. §67-5-225 is constitutional on its face.
>
> 2. Whether the trial court erred in determining that T.C.A. §67-5-225 is constitutional as applied.

3. Whether the trial court erred in determining that the YMCA of Middle Tennessee meets the requirements of T.C.A. §67-5-225.

These issues raise questions of both law and fact. Concerning the constitutionality of T.C.A. §67-5-225, we will review the trial court's determination ***de novo*** upon the record with no presumption of correctness accompanying the trial court's conclusions of law. ***See*** Tenn. R. App. P. 13(d); ***Waldron v. Delffs***, 988 S.W.2d 182, 184 (Tenn. Ct. App. 1998); ***Sims v. Stewart***, 973 S.W.2d 597, 599-600 (Tenn. Ct. App. 1998). However, the trial court's determination that the YMCA meets the requirements of T.C.A. §67-5-225 is one of fact. As such, we will review these findings upon the record with a presumption of correctness of the findings of fact by the trial court. Unless the evidence preponderates against the findings, we must affirm absent error of law. ***See*** Tenn. R. App. P. 13(d). Furthermore, the weight, faith, and credit to be given to any witness' testimony lies in the first instance with the trier of fact, and the credibility accorded will be given great weight by the appellate court. ***Kim v. Boucher***, 55 S.W.3d 551 (Tenn.Ct. App.2001).

Constitutionality of T.C.A. §67-5-225

As set out above, in its "Memorandum Opinion" of January 23, 2004, the trial court concluded that T.C.A. §67-5-225 is constitutional on its face because: (1) "the classification for fitness centers contained in the statute is reasonably related to the expressed public policy to provide for the physical health and social well-being of citizens;" and (2) the statute "does not create a new property tax exemption for the YMCA [to the exclusion of all others]." In its brief, Club Systems asserts that both of these conclusions are in error. First, Club Systems argues that the statute creates a "per se" exemption without regard to the actual charitable use of the property in violation of Tenn. Const. art. II, § 28. Club Systems further contends that the exemption was passed for the exclusive benefit of the YMCA (to the exclusion of all others) in violation of Tenn. Const. art. XI, § 8.

Before addressing Club Systems' specific arguments, we first note that statutes enacted by the Legislature are presumed constitutional. ***Vogel v. Wells Fargo Guard Servs***., 937 S.W.2d 856, 858 (Tenn.1996). Thus, we must "indulge every presumption and resolve every doubt in favor of constitutionality." ***Id.*** In addition, it is well recognized that "[a] facial challenge to a legislative Act is ... the most difficult challenge to mount successfully since the challenger must establish that no set of circumstances exist under which the Act would be valid." ***See Davis Kidd Booksellers, Inc. V. McWherter***, 866 S.W.2d 520, 525 (Tenn. 1993) (citing ***United States v. Salerno***, 481 U.S. 739, 745, 107 S.Ct. 2095, 2100, 95 L.Ed.2d 697 (1987)).

Tenn. Const. art. II, § 28 provides, in relevant part, as follows:

> ...[A]ll property, real, personal or mixed shall be subject to taxation, but the legislature may except...such as may be held and used for purposes purely religious, charitable, scientific, literary or educational...

The purpose and effect of this constitutional provision were stated by our Supreme Court in ***City of Nashville v. State Board of Equalization***, 360 S.W.2d 458 (Tenn.1962), as follows:

> [T]his provision of our Constitution does not grant any tax exemption, does not establish any public policy of exemption, but merely authorizes, permits, the legislature to grant exemption in the cases specified.

Id. at 462.

In Tennessee, contrary to most other states, a tax exemption in favor of religious, scientific, literary and educational institutions is liberally construed rather than strictly construed. ***See, e.g., Mid-State Baptist Hospital, Inc. v. City of Nashville***, 366 S.W.2d 769, 773 (Tenn. 1963) (citing ***Sunday School Board of Southern Baptist Convention v. Evans***, 192 Tenn. 495, 241 S.W.2d 543; ***City of Athens v. Dodson***, 154 Tenn. 469, 290 S.W. 36; ***Cumberland Lodge, No. 8, F. & A. M., v. City of Nashville***, 127 Tenn. 248, 154 S.W. 1141). Under a liberal construction of tax exemptions, the test for determining whether the use requirement of Tenn. Const. art. II, § 28 is satisfied by T.C.A. § 67-5-225 is as stated by our Supreme Court in ***Methodist Hospitals of Memphis v. Assessment Appeals Comm'n***, 669 S.W.2d 305 (Tenn.1984), to wit:

> In a series of cases decided since ***City of Nashville v. State Board of Equalization*** [210 Tenn. 587, 360 S.W.2d 458 (Tenn.1962)], this Court has held that the use requirement for property to be tax exempt is met where the use is "directly incidental to or an integral part of" one of the recognized purposes of an exempt institution.

Id. at 307.

In short, Tennessee courts have held that, in order to be exempt from taxation, property owned, occupied, and used by a charitable institution must be used exclusively for carrying out one or more of the purposes for which the institution exists or for a purpose which is directly incidental to the institution's purpose. ***City of Nashville v. State Bd. of Equalization***, 360 S.W.2d 458, 466 (Tenn. 1962); ***George Peabody College for Teachers v. State Bd. of Equalization***, 407 S.W.2d 443, 446 (Tenn. 1966). It is use of the property, and not the charitable nature of its owner, which determines its exempt status. ***Mid-State Baptist Hosp., Inc. v. City of Nashville***, 366 S.W.2d 769, 772 (Tenn. 1963).

In the instant case, Club Systems asserts that T.C.A. § 67-5-225 violates Tenn. Const. art. II, § 28 of the Tennessee Constitution because the statute does not "focus on the use of the property." Rather, Club Systems contends that the primary focus of the statute is on the "nature of charitable institution[s]" and not on the use of the property itself. As set out above, T.C.A. § 67-5-225 provides for tax exemption for "real and personal property ***used*** as a nonprofit family wellness center." T.C.A. § 67-5-225(a) (emphasis added). The statute goes on to define a "family wellness center" as "real

or personal property ***used*** to provide physical exercise opportunities for children and adults." ***Id.*** (emphasis added). However, under the plain language of the statute, a family wellness center is only considered charitable if the owner and operator of that center meets the very specific criteria outlined in the body of the statute. Specifically, the property must be owned by a charitable institution that is a 501(c)(3), tax-exempt organization for federal income tax purposes. T.C.A. § 67-5-225(b). In addition, the nonprofit organization must provide the programs described in the statute to all persons regardless of ability to pay. The specific organizational requirements outlined in the statute only work to insure that any property receiving a tax exemption under this statute is being held and used solely for charitable purposes as required by Tenn. Const. art. II, §28. In placing these organizational requirements in the statute, however, the legislature does not overlook the use of the property itself. Given the requirement that the property be ***used*** "to provide physical exercise opportunities..." raises a pivotal question under Tenn. Const. art. II, § 28–that being whether property that is dedicated to provide physical exercise opportunities "to those of all ages, incomes and abilities" without regard to the ability to pay is a "purely charitable" use of property. T.C.A. § 67-5-225(a)(3).

Although Tenn. Const. art. II, § 28 authorizes the Legislature to exempt from taxation property that is "held and used for purposes purely religious, charitable, scientific, literary, or education," the Tennessee Constitution does not define the term "charitable". This fact necessarily allows the Legislature some discretion in determining the meaning of the term. The Legislature has defined the term "charitable institution" as "any nonprofit organization or association devoting its efforts and property, or any portion thereof, exclusively to the improvement of human rights and/or conditions in the community." T.C.A. § 67-5-212(c). In addition, our Supreme Court has defined "charity" as follows:

> Probably the most comprehensive and carefully drawn definition of a charity that has ever been formulated is that it is a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.

Baptist Hospital v. City of Nashville, 3 S.W.2d 1059, 1060 (Tenn.1928).

Although there are no Tennessee cases that specifically find that providing facilities for physical exercise is a charitable use of property, other jurisdictions have reasoned that providing a place for physical activity constitutes a charitable use. For example, in ***Indianapolis Osteopathic Hospital, Inc.d/b/a Westview Hospital and Health Institute of Indiana, Inc. v. Dep't of Local Gov't Finance***, 818 N.E.2d 1009 (Ind. Tax 2004), the court stated:

> [e]ducating the public about the benefits of physical activity, providing an appropriate place to engage in physical activity and

> customizing exercise programs to meet the individual needs of...users are all charitable purposes because the clear aim of such activities is to prevent the known maladies documented by the Surgeon General's Report...

Id. at 1016 (citations omitted).

Likewise, in ***Dynamic Sports Fitness Corp. of America, Inc. v. The Community YMCA of Eastern Delaware***, 768 A.2d 375 (Pa. Cmwlth., 2001), the Pennsylvania court stated:

> We have no hesitation in saying that athletic programs and facilities may serve a charitable purpose; they not only benefit the physical health of participants but improve the quality of life in a community.... In this respect, an athletic center serves a purpose similar to the civic theater .... Both athletics and the theater are important cultural expressions that promote emotional, mental, and, in the case of athletics, physical well-being. The golden age of ancient Greece is remembered both for Sophocles and the Olympic games. It would be arbitrary to say that art deserves more support than sports; the two involve different dimensions of the life of the individual as well as the community. The public interest demands that the community offer both outlets to the creative energies of its citizens.... [In this regard, w]e note that nearly all cities of any size have a parks and recreation department with responsibility to maintain playing fields and other athletic facilities.... We see no clear distinction between athletic activities and physical fitness programs. One of the public benefits of athletics lies in promoting physical health; and physical activities often have an element of play similar to athletics. ... [O]ur municipal parks sometimes provide jogging paths or exercise stations. To the extent that physical fitness programs place particular emphasis on the goal of health, they equally serve a charitable purpose.... The physical education programs in our schools and the existence of a President's Council on Physical Fitness attest to the social interest in cultivating physical strength and vigor among our citizens.
>
> The promotion of health requires preventative measures as well as treatment of the ill; all public health programs from the federal to local level in fact provide programs ranging from vaccination to health education.... [YMCA] programs, such as cardiovascular workouts, serve a closely related goal by helping to maintain physical wellness. Whether or not such programs come strictly within the rubric of preventative medicine, they serve an essentially similar social interest....

Id. at 383 (citations omitted).

Given our Supreme Court's definition of "charity", and the stance taken by other jurisdictions, we conclude that providing facilities for physical activity to people regardless of their ability to pay for same inures to the "benefit of an indefinite number of persons...by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life...." Consequently, providing an exercise facility ***may*** be deemed charitable in nature. However, in some instances, the fact that a property provides a facility for physical exercise may not qualify as a charitable use. In its brief, the Board gives the following analogy:

> [A]lthough two hospitals may provide similar medical services within a community, the nonprofit hospital may be eligible for a charitable use exemption that is unavailable to the for-profit hospital.

Under T.C.A. §67-5-225, the tax exemption is not conferred upon the property merely because of its character or status as a family wellness center; the exemption is given because the property meets both the statutory definition of family wellness center (i.e. it provides "physical exercise opportunities for children and adults") and the other statutory criteria governing the property's operation (i.e. its charitable nature). Consequently, the statute does not create a per se exemption for family wellness centers that bears no relation to the property's actual use.

Club Systems next argues that T.C.A. §67-5-225 violates Tenn. Const. art. XI, § 8, which provides as follows:

> The legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunities or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law.

Tennessee courts have recognized that the Class Legislation Clause of Tenn. Const. art. XI, § 8 is similar to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Consequently, our Supreme Court has applied Equal Protection analysis to questions arising under the Class Legislation Clause. ***See, e.g., Riggs v. Burson***, 941 S.W.2d 44, 52 (Tenn.1997). Our Supreme Court has also recognized that Tenn. Const. art. XI, § 8 "guarantees that persons similarly situated shall be treated alike" ***Evans v. Steelman***, 970 S.W.2d 431, 435 (Tenn.1998) (citation omitted), and that this constitutional provision "prohibits the General Assembly from suspending the general law or passing any law inconsistent with the general law for the benefit of any individual [or group of individuals]...." ***Finister v. Humboldt Gen. Hosp ., Inc.***, 970 S.W.2d 435, 440 n. 3 (Tenn.1998).

However, the Class Legislation Clause does not remove from the General Assembly all power to draw classifications distinguishing among differing groups. "The initial discretion to determine what is 'different' and what is 'the same' resides in the legislatures of the States, and the legislatures are allowed considerable latitude in establishing classifications and thereby determining what groups are different and what groups are the same." ***State v. Smoky Mountain Secrets, Inc***., 937 S.W.2d 905, 912 (Tenn.1996) (quoting ***Plyler v. Doe***, 457 U.S. 202, 216, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982) (internal quotation marks omitted)). Therefore, unless the classification interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class, Tenn. Const. art. XI, § 8 requires only that the legislative classification be rationally related to the objective it seeks to achieve. ***See, e.g., Newton v. Cox***, 878 S.W.2d 105, 110 (Tenn.1994). Under the rational basis standard, "if some rational basis can be found for the classification [in the statute] or if any state of facts may reasonably be conceived to justify it, the classification will be upheld." ***Tennessee Small Sch. Sys. v. McWherter***, 851 S.W.2d 139, 153 (Tenn. 1993). Tennessee courts have consistently held not only that the rational basis standard is a very low level of scrutiny, but also that the party challenging the rational basis of a statute bears the burden of proving that the legislative classification in that statute is unreasonable and arbitrary. ***See, e.g., Harrison v. Schrader***, 569 S.W.2d 822, 826 (Tenn. 1978).

Club Systems contends that "the statutory language clearly limits the beneficiaries [of the tax exemption available under the statute] to the YMCA. Although the record supports a finding that T.C.A.§67-5-225 was drafted with the YMCA in mind, a review of the statutory language reveals that the requirements thereunder are not so onerous as to evade application to other organizations. The statute requires that the family wellness center be owned by a nonprofit, 501(c)(3) corporation. T.C.A. §§67-5-225(b). The fact that the statute distinguishes between nonprofit wellness centers like the YMCA and for-profit centers like those owned by Club Systems is rationally related to a legitimate state interest, particularly in light of the statute's additional requirement that the nonprofit corporation be a charitable institution that provides specific types of programs and services that are dedicated to improving conditions in the community and supporting families. T.C.A. §§67-5-225(a)(2). In addition, the statute requires that these programs and services be provided to persons of all ages, incomes and abilities regardless of ability to pay. T.C.A. §§67-5-225(a)(3). As discussed above, physical fitness of its citizens is, at least, a legitimate state interest. The fact that T.C.A. §67-5-225 provides a tax break for those institutions that provide a place to exercise and a place to learn about the importance of physical fitness regardless of age, income or ability to pay is most definitely rationally related to the legitimate state interest of healthy citizens.

Club Systems asserts that "[n]o organization in Tennessee other than the YMCA meets the finely detailed description outlined in the statute." We have reviewed the record in this case and find no support for this statement one way or the other. However, even if the YMCA is currently the only beneficiary of this legislation, we can find nothing that would prohibit other entities from taking advantage of the statute's exemption if those organizations meet the criteria outlined in the statute. Consequently, we cannot conclude that T.C.A. §67-5-225 violates Tenn. Const. art. XI, § 8.

Having concluded that T.C.A. §67-5-225 is not unconstitutional on its face, we now turn to the question of whether the statute is unconstitutional as applied. Specifically, Club Systems asserts that:

> Tenn. Code Ann. §67-5-225 is invalid when applied to the YMCA in conjunction with Tenn. Code Ann. §67-5-212, and, therefore, the statute is unconstitutional as applied.

In its brief, Club Systems asserts that T.C.A. §67-5-212 is somehow more narrow than T.C.A. §67-5-225 and that T.C.A. §67-5-212 must control since, as stated by Club Systems, "if two statutes are construed in pari materia and one includes provisions omitted from the other, then the omitted provisions will be applied to both statutes, unless that provision is inconsistent with the purposes of the statute." We find Club Systems' argument to be tenuous at best. In the first instance, the record does not support a finding that T.C.A. §67-5-212 and T.C.A. §67-5-225 are in conflict. Rather, as stated by Representative Matt Kisber, chairman of the House Finance, Ways and Means Committee, in commenting on T.C.A. §67-5-225:

> What [the statute] does is ***clarify*** that fitness centers owned by not for-profit current tax exempt charitable institutions are to be considered part of their charitable mission. ***Clarifies*** the status for instance of the YMCA's. They would be the ones who would be most affected, positively affected by this legislation. ***Clarifies*** their tax exempt status.

(Emphasis added).

Based upon the record before us, we can only conclude that T.C.A. §67-5-225 was enacted to clarify existing law under T.C.A. §67-5-212 that real and personal property dedicated to providing physical exercise opportunities to children and adults without regard to the ability to pay, is a tax-exempt charitable use of property. As discussed above, Tenn. Const. art. II, §28 specifically empowers the Legislature with authority to create such exemptions. Consequently, the only issue to be decided under Club Systems' unconstitutional as applied argument is whether the YMCA property is being used in a "purely" charitable manner as required by the Tennessee Constitution. ***See*** Tenn. Const. art. II, §28; ***see also*** T.C.A. §67-5-212(a) (2003).

Club Systems advances a very strict construction of the constitutional and statutory requirement that the property be used in a "purely" charitable manner. However, Tennessee courts have recognized that "the proper test is whether the challenged use is 'directly incidental to or an integral part of one of the recognized purposes of an exempt institution.'" ***Youth Programs, Inc. v. Tennessee State Bd. of Equalization***, 170 S.W.3d 92, 102 (Tenn. Ct. App. 2004) (quoting ***Methodist Hosps. v. Assessment Appeals Comm'n***, 669 S.W.2d 305, 307 (Tenn. 1984)). Club Systems' seems to suggest that YMCA's charitable use claim is defeated by the fact that it provides certain amenities, such as televisions, sound systems, vending machines, waiting areas, and parking lots at its family

wellness centers. As discussed by this Court in the ***Youth Programs*** case, there is a long line of cases directly on point, to wit:

> In 1984, the supreme court again considered the tax status of property incidental to the stated purposes of an exempt institution. In ***Methodist Hospitals of Memphis***, the State sought to levy an ad valorem property tax on a parking lot owned by the Hospital and used to provide free parking to Hospital employees. ***Methodist Hosps. of Memphis v. Assessment Appeals Comm'n***, 669 S.W.2d 305, 306 (Tenn.1984). The Methodist Hospitals court noted an apparent conflict in the law due to the court's interpretation of the requirement that exempt property must be used "purely and exclusively" for the institution's purpose. ***Id***. The court stated, however, "[i]n a series of cases decided since ***City of Nashville v. State Board of Equalization*** ... this court has held that the use requirement for property to be exempt is met where the use is 'directly incidental to or an integral part of' one of the recognized purposes of an exempt institution." ***Id***. at 307. Noting the mobility of contemporary society and the need to provide safe, convenient parking around-the-clock to employees, the court held the Hospital employee parking lot was exempt from taxation as an "essential and integral part" of the Hospital. ***Id***. Similarly, in ***Shared Hospital Services Corporation v. Ferguson***, the supreme court held that the laundry facilities of a non-profit cooperative whose members were hospitals and which supplied laundry services to those members was exempt from taxation. ***Shared Hosp. Servs. Corp. v. Ferguson***, 673 S.W.2d 135 (Tenn.1984). In that case, the State argued that Shared Hospital Services was a large commercial laundry which operated in direct competition with similar tax-paying enterprises. ***Id***. at 137. The State further contended the facility's lunchroom and parking lot were subject to taxation under ***City of Nashville***. ***Id***. The supreme court held the parking lot was exempt under ***Methodist Hospitals***, and that the lunchroom also was exempt. The court further held that laundry services were part of hospital operations, and that the property of the non-profit corporation formed solely to provide those services was exempt from taxation. ***Id***. at 139.
>
> Subsequent to the supreme court's holding in ***Shared Hospital Services***, this Court considered whether a gift shop located within a hospital, operated by the hospital, and staffed by volunteers was exempt from taxation under section 67-5-212. ***Middle Tenn. Med. Ctr. v. Assessment Appeals Comm'n***, No. 01A01-9307-CH-00324, 1994 WL 32584 (Tenn.Ct.App. Feb.4, 1994)(perm. app. denied May

9, 1994). In ***Middle Tennessee Medical Center***, we held that the gift shop was "a traditional hospital function" and was "'directly incidental to or an integral part of' the charitable function of the medical center." ***Id***. at *4. Accordingly, we held the gift shop was exempt from taxation under the section. ***Id***. We further determined that an exercise or wellness center located in the hospital but advertised to the general public was exempt only to the extent that it was utilized by patients under a doctor's care. ***Id***. at *5.

This Court recently determined that certain real properties owned by religious institutions were not exempt from taxation in ***First Presbyterian Church of Chattanooga*** and ***Christian Home for the Aged***. In ***First Presbyterian***, we considered the tax status of a house owned by a church and used for the convenience of missionaries on home assignment. ***First Presbyterian Church of Chattanooga v. Tennessee Bd. of Equalization***, 127 S.W.3d 742 (Tenn.Ct.App.2003)(perm. app. denied Feb. 2, 2004). The property in dispute in ***First Presbyterian*** was church property used to provide housing to overseas missionaries temporarily returning to the United States. ***Id***. It also was occupied temporarily by a church minister who was relocating to Chattanooga while he was searching for permanent housing. ***Id***. We held that although the church's mission projects were commendable, the use of property as temporary housing for the convenience of oversees missionaries was not "reasonably necessary to a missionary being able to accomplish the Church's religious purpose" and, therefore, was not within the statutory exemption. ***Id***. at 748-49. Similarly, in ***Christian Home for the Aged***, we determined that retirement community property owned by a religious institution was not exempt from taxation under section 67-5-212(a). ***Christian Home for the Aged, Inc. v. Tennessee Assessment Appeals Comm'n***., 790 S.W.2d 288, 291 (Tenn.Ct.App.1990)(perm. app. denied May 7, 1990). In ***Christian Home for the Aged***, we noted that the property primarily was occupied for residential purposes and not to further any religious purpose. ***Id***. Further, the residential facilities were not offered without rent or donations but were available only to those who were financially able to afford them and who had been "scrutinized for financial ability as well as moral character and physical condition." ***Id***. at 292. We accordingly held that the chapel located within the retirement community qualified for exemption from taxation, but that the residential facilities did not. ***Id***.

Youth Programs, Inc. v. Tennessee State Bd. of Equalization, 170 S.W.3d 92, 101-102 (Tenn. Ct. App. 2004).

Most of the cases relied upon by Club Systems support the well settled principle that property that is used by a charity embarking on a business for profit on that property becomes liable for taxation. ***See, e.g., Mid-State Baptist Hosp., Inc. v. City of Nashville***, 366 S.W.2d 769, 772 (Tenn. 1963). However, the line of cases discussed in ***Youth Programs***, *see supra*, are more on point in the instant case. Those cases have consistently recognized that amenities such as those provided by the YMCA (e.g. parking lots, waiting rooms) qualify as a charitable use of the property. Concerning the YMCA's use of sound systems and televisions, the record indicates that these amenities are provided in the waiting rooms and work out facilities, which are an integral part of the charitable purpose espoused by the YMCA. These amenities, although incidental to the accomplishment of the YMCA's charitable function, nonetheless qualify for tax-exempt status under the line of cases discussed above.

Whether the YMCA qualifies for exemption under T.C.A. §67-5-225

Before delving into this issue, we reiterate that the trial court's finding that the YMCA qualifies for property tax exemption under T.C.A. §67-5-225 involves findings of fact by the trial court. Unless the evidence preponderates against the findings, we must affirm, absent error of law. Tenn. R. App. P. 13(d). As set out above, T.C.A. §67-5-225 requires, *inter alia*, that the YMCA, as the owner and operator of various family wellness centers in and around Nashville, be a 501(c)(3) organization. T.C.A. §67-5-225(b). It is undisputed in the record that the YMCA meets this organizational requirement. In addition, the statute requires that "directors and officers shall serve without compensation beyond reasonable compensation for services performed." T.C.A. §67-5-225(b)(1). Club Systems asserts that the salary paid to the YMCA CEO is unreasonable and in direct violation of this organizational criterion. We disagree. The Board specifically found that the YMCA had complied with federal standards for tax exempt organizations in establishing salaries and that the salaries were in line with the work performed. The trial court upheld the Board's determination. The record indicates that the YMCA has a $60 million operating budget, it has hundred of programs, which serve over 160,000 people. The YMCA has approximately 2,900 employees and 3,100 volunteers. Given the scope of this organization, we cannot agree with Club Systems' statement that the salary paid to YMCA's CEO is "clearly excessive." Club Systems asserts that the "Hay Salary Administration System" is the ultimate arbiter of reasonable compensation; however, the record simply does not support this proposition. Given the totality of the circumstances, as derived from the record before us, we cannot conclude that the evidence preponderates against the trial court's finding that the salaries paid by the YMCA are reasonable.

Club Systems further contends that T.C.A. §67-5-225 requires each of the family wellness centers owned and operated by the YMCA to comply (on an individual basis) with five (5) of the eight (8) requirements set out at T.C.A. §67-5-225(a)(2). Under the plain language of the statute, however, the requirements of T.C.A. §67-5-225(a)(2) apply only to the YMCA as an organization and not to each of its individual centers. It is undisputed in the record that the YMCA, as an organization, satisfies the requirements of T.C.A. §67-5-225(a)(2). Under the statute, the only requirement that must be met by each of the individual properties is that each must be used as a family wellness center, which, by definition, requires that each property "provide physical exercise

opportunities for children and adults." It is uncontested in the record that each of the individual centers provides "physical exercise opportunities" to its patrons. However, there is some dispute in the record as to whether the Uptown YMCA provides these opportunities to children. Club Systems asserts that "the YMCA violates the spirit of the statute in failing to provide, and, in fact, discouraging, physical exercise opportunities for children at the Uptown YMCA location."

The Uptown YMCA is considered part of the so-called Downtown District of the YMCA of Middle Tennessee, which consists of the Downtown YMCA, the Youth Development Center offices, the McKissack School facility, and the Uptown YMCA. Although these properties are governed by a single board of directors, we cannot go so far as to agree with the Board and the Chancellor's determination that "the two physically separate properties [i.e. the Downtown YMCA and the Uptown YMCA] may be considered one wellness center as the YMCA contends." If the Uptown YMCA is a separate property for tax purposes, then it must necessarily be evaluated individually under the statute. Consequently, the sole question is whether the Uptown YMCA provides access to children. Turning to the record, trial exhibit 4, the website homepage for the Uptown YMCA, clearly states that "[t]he Uptown YMCA is [] an adult facility providing equipment and services to meet the needs of persons 18 years and older. Although the YMCA contends that the Uptown YMCA location does not exclude children, all of the testimony it cites to in its brief relates to the Downtown YMCA location, which, as discussed above, we do not consider to be the same property as the Uptown YMCA. Consequently, any testimony concerning the Downtown YMCA's granting access to children does not satisfy that same requirement for the Uptown YMCA. On the other hand, the following relevant testimony was adduced from the YMCA CEO, David Byrd:

> Q. On page 75 of the transcript of the Board of Equalization which is part of the record in this cause, page 75, line 11, I asked you the question, children aren't allowed in the Uptown Y, are they. They are not permitted the use of the facility. Answer, we don't encourage that. Question, well, let me elaborate on that a little bit, are they permitted to use the Uptown facility or not. Well–answer, well, since so much of that is health and wellness type activities, the type of equipment and programs there–that are there would not be necessarily conducive for their health and safety at that particular location. Do you remember saying that?
>
> A. I do, still very accurate.
>
> Q. That's still accurate?
>
> A. But never did we, did I ever say that they [children] could not use that YMCA nor does the policy say that.
>
> Q. So although it's not a formal policy, it's just generally the practice?

> A. Not accurate either. Is that if we have a child there that's unsupervised, that puts themselves at risk, that's not with a parent and that would be the case in everything we do.
>
> Q. You weren't qualifying that answer by supervision or times or anything like that, were you, when you gave me that answer?
>
> A. It's been sometime back. I don't recall. Teenagers and young people can use the Uptown Y.

Under the statute, the question is not whether children actually use the Uptown YMCA facility. Rather, the question is whether children are allowed access to this property. If not, then this particular location does not satisfy the requirements of T.C.A. §67-5-225. From the record before us, there is sufficient evidence to create a genuine question concerning the status of children at the Uptown location. The record, although it does not definitively answer this question, also does not provide sufficient evidence to support the trial court's conclusion that the Uptown YMCA satisfies the statutory requirements. Consequently, we must reverse the trial court's determination that the Uptown YMCA satisfies the requirement under T.C.A. §67-5-225 and remand for further proceedings to determine same.

For the foregoing reasons, we reverse the Order of the trial court to the extent that it concludes that the Uptown YMCA location satisfies the statutory requirement, under T.C.A. § 67-5-225, that it provide "physical exercise opportunities for ***children***..." (emphasis added). We remand for a determination of whether the Uptown YMCA location satisfies this criterion. The Order of the trial court is otherwise affirmed. Costs of this appeal are assessed one-half to Appellants, Club Systems of Tennessee, Inc. d/b/a The Club at Green Hills, The Club at Bellevue, Inc., and Quality Health Clubs for Fair Tax Treatment Seeking Revocation of the Exempt Status of Property Owned by the YMCA of Middle Tennessee, and their respective sureties, and one-half to Appellee, YMCA of Middle Tennessee.

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W. FRANK CRAWFORD, PRESIDING JUDGE, W.S.